IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

TUESDAY, THE 31ST JULY 2007 / 9TH SRAVANA 1929

MFA.No. 556 of 2002(B)

WCC.165/2002 of W.C.C.,THRISSUR
.....

APPELLANT/OPPOSITE PARTY II:

THE NEW INDIA ASSURANCE CO.LTD.,
REPRESENTED BY ITS ASSISTANT
ADMINISTRATIVE OFFICER, REGIONAL
OFFICE, KANDOMKULATHY TOWERS,
M.G.ROAD, ERNAKULAM.

BY ADV. SRI.THOMAS MATHEW NELLIMOOTTIL

RESPONDENTS/APPLICANT & OPPOSITE PARTY I:

1. SANTHOSH, S/O.RAMAKRISHNAN,
NEDIYAMBATH HOUSE, THALIKULAM.

2. MR.P.K.BALAN, IV/169, CATHEDRAL
JUNCTION, IRINJALAKUDA.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 31/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.3283/2002 IN MFA 556/2002

DISMISSED

31.7.2007

SD/-J.B.KOSHY, JUDGE
SD/-K.P.BALACHANDRAN, JUDGE

/TRUE COPY/

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No. 556 of 2002

JUDGMENT

Koshy, J.

This appeal is filed by the Insurance Company challenging the quantum of compensation awarded by the Tribunal. The first respondent met with an accident during the course of his employment. He applied for compensation before the Workmen's Compensation Commissioner.The Commissioner assessed compensation at Rs.1,87,182/-. The accident occurred on 22.5.2000. Even though he was getting Rs.3,000/- per month, in view of the limitation provided under the Workmen's Compensation Act, Rs.2,000/- was taken as the monthly income. From the driving licence his date of birth was found as 30.5.1970 and index was taken for a 30 year boy. The contention of the Insurance Company is that 75% loss of earning capacity taken by the Tribunal is on the higher side. As per the wound certificate,

he suffered the following injuries:

> "1. Contusion.
> 2. Lacerated would left leg.
> 3. Fracture left fibula."

There was some complication and finally skin grafting, etc. was also done. The Commissioner, as per Exhibit A12 disability certificate, assessed loss of earning capacity of of the appellant as a driver at 75%. The Commissioner found as follows:

> "The Disability certificate issued to the applicant was marked as Exhibit A12. The Doctor T.G.Gopinathan, B.Sc., MBBS, D.Ortho., Aswini Hospital, Thrissur, who issued the disability certificate was present before this Authority and tendered evidence as Medical Witness AW2. According to him, the present complaints of the applicant are shown below:

1. Pain on walking with bulging of the muscle on the middle of the left leg.

2. Difficulty in climbing steps, difficulty in squatting due to the above said problems.

3. Instability of the left knee due to the Anterior Cruciate Ligament injury.

4. Sensory loss on the area of grafting and below that area.

When the applicant was examined, he deposed as follows:

> The doctor who issued the certificate was assessed the loss of earning capacity at 75% as a driver. The learned counsel for the second opposite party cross examined the medical witness and nothing was brought out to disbelieve the assessment made by a qualified medical practitioner. Hence, I also decide that the loss of earning capacity of the applicant is 75% as a driver."

It cannot be stated that the Tribunal has calculated compensation in an arbitrary manner. Section 4(1)(c)(ii) of the Workmen's Compensation Act provides the manner in which compensation should be calculated for a non scheduled injury, by which, it is provided that compensation shall be granted based on the assessment of loss of earning capacity made by the doctor. Loss of earning capacity is different from physical disability, as held by the Supreme Court in **Pratap Narain Singh Deo v. Srinivas Sabata** ((1976) 1 SCC 289). The Commissioner is bound to assess the loss of

earning capacity considering the assessment made by the qualified medical practitioner. Here, loss of earning capacity was assessed and calculated the compensation in accordance with the provisions of the Act and considering the medical certificate. Therefore, we see no reason to interfere in the matter.

The appeal is dismissed.

(J.B.Koshy, Judge)

31st July, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No.556 of 2002

JUDGMENT

31st July, 2007